**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

*In re* Application of

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| Mark WEBSTER, *et al.* | Art Unit: 2665 |
| Serial No. 09/586,571 | Examiner: R. Shand |
| Filed: June 2, 2000 | Attorney Docket No. 56162.000547 |

For: DUAL PACKET CONFIGURATION FOR WIRELESS COMMUNICATIONS

## APPLICANTS' STATEMENT ON SUBSTANCE OF INTERVIEW

Applicants first scheduled an Interview with Examiner Shand for Thursday, October 13 to discuss the outstanding rejection. This Interview had to be cancelled by the Examiner due to personal illness. As a result the Interview was rescheduled for Monday, November 7. On Monday, November 7, 2005, a telephonic interview was conducted between Examiner Roberta Shand, Applicant Mark Webster and applicant's representatives Kevin Duncan and Phillip Mancini. During that interview Applicant and his representatives presented evidence to Examiner Shand regarding the outstanding rejection under 35 U.S.C. § 102(e) based on U.S. Patent 6,678,310 to Andren *et al.* and the outstanding rejection under 35 U.S.C. § 103(a) based on U.S. Patent 6,590,889 to Preuss *et al.*

Regarding the Andren *et al.* patent, Mr. Webster, a co-inventor of that patent, explained in substance how that patent is different than the instant application. Namely, he explained that the invention described and claimed in the present application was conceived with the goal of designing a new packet that could be used by the higher data rate (OFDM-modulated) devices that would still allow them to operate in the same wireless space as the lower data rate (serial

modulation-based) devices without interference. Applicants and their representatives stated that consistent with this goal, the claims of the instant application recite a modulation scheme in which a portion of a packet is modulated according to serial modulation while another portion is modulated according to the parallel modulation technique orthogonal frequency division multiplexing (OFDM), otherwise known as discrete multi-tone (DMT). Mr. Webster explained that the Andren patent concerned mitigating multipath interference. Mr. Webster and his representatives demonstrated that the features of the instant application are not disclosed or even suggested by the subject matter of the Andren patent. They represented that the only mention of OFDM in the Andren patent was in the context of how OFDM mitigates multipath interference and that nowhere in the Andren patent is there suggestion of modulating first and second portions of a packet according to serial modulation and OFDM-based modulation respectively. The Andren patent was not conceived to deal with interoperability of different wireless systems, but rather ways of dealing with multi-path interference, copies of signals coming from the same device that arrive at different times. Examiner Shand agreed that as explained by Applicants the present invention is patentably distinguishable over the Andren patent and she suggested that Applicants submit an affidavit from Mr. Webster to make of record the distinctions between the claims of the instant application and the Andren patent. In response to Examiner Shand's suggestion, an affidavit from Mr. Webster under 37 C.F.R. § 1.132 distinguishing the claims of the instant application over the Andren patent was submitted on November 10, 2005.

Regarding the Preuss *et al.* patent, during the interview substantial arguments were made distinguishing over that reference as well. For example, Applicants explained in detail how the cyclically redundant code discussed in Preuss is different than the claims of the instant application. For example, Mr. Webster distinguished the DSSS system of Preuss, where one or

more phases of a cyclically redundant code are assigned to terminals operating on the network

based on their relative data transfer rates, from the dual modulation scheme using serial

modulation one portion of a packet and OFDM parallel modulation on another portion of the

present invention as claimed.   Further, the previous rejection alleged that the mention of an FFT

in the Preuss patent implied that OFDM was being used. Mr. Webster explained in detail that

FFT and IFFT were required in the Preuss system to decode the phase shifted data using the

method disclosed in the Preuss patent and did not imply the use of OFDM in any manner much

less in the context of the present invention. The Examiner indicated that she appreciated

Applicants' explanation and agreed to discuss the distinctions with Primary Examiner Stephen

Nguyen.

Respectfully submitted,

HUNTON & WILLIAMS
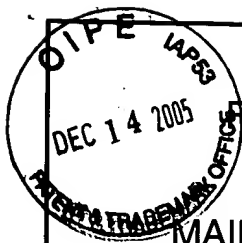
Date: 12/14/05

By: _____

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# FEE TRANSMITTAL

## MAIL STOP AFTER-FINAL

| Complete If Known | |
|---|---|
| Application No. | 09/586,571 |
| Filing Date | June 2, 2000 |
| First Named Inventor | Mark A. Webster et al. |
| Examiner Name | Roberta A. Stevens |
| Group Art Unit | 2665 |
| Attorney Docket No. | 56162.000547 |

| Total Amount Of Payment | ($) 1690.00 |
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| METHOD OF PAYMENT (check one) | FEE CALCULATION (continued) |
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**1.** ☐ The Commissioner for Patents is hereby authorized to charge indicated fees and credit any over payments to **Deposit Account No. 50-0206** in the name of Hunton & Williams LLP.

**2.** ☒ Check Enclosed. The Commissioner for Patents is hereby authorized to charge any variance between the amount enclosed and the Patent Office charges to **Deposit Account No. 50-0206** in the name of Hunton & Williams LLP, 1900 K Street, N.W., Suite 1200, Washington, D.C. 20006-1109.

### FEE CALCULATION

**1. BASIC FILING FEE**  ☒ Large Entity  ☐ Small Entity

**FEE PAID**

| | |
|---|---|
| Utility Filing Fee | $ |
| Design Filing Fee | $ |
| Plant Filing Fee | $ |
| Reissue Filing Fee | $ |
| Provisional Filing Fee | $ |

### 3. ADDITIONAL FEES

| Fee Description | Fee Paid |
|---|---|
| ☐ Surcharge - late filing fee or oath | $ |
| ☐ Surcharge - late provisional filing fee or cover sheet | $ |
| ☒ 2nd and 3rd Months Extension of Time | $ 900.00 |
| ☐ Notice of Appeal | $ |
| ☐ Filing Brief in Support of Appeal | $ |
| ☐ Request for Oral Hearing | $ |
| ☐ Utility Issue Fee (or Reissue) (including Publication Fee, if necessary) | $ |
| ☐ Design Issue Fee | $ |
| ☐ Plant Issue Fee | $ |
| ☐ Petition to Commissioner | $ |
| ☐ Petition to Revive (Unavoidable) | $ |
| ☐ Petition to Revive (Unintentional) | $ |
| ☐ Petitions Related to Provisional Applications | $ |
| ☐ Submission of Information Disclosure Statement | $ |
| ☐ Filing Submission After Final Rejection | $ |
| ☐ Recording Each Patent Assignment Per Property | $ |
| ☐ Filing Request for Reexamination | $ |
| ☒ Other (specify) Request for Continued Examination Fee | $ 790.00 |

### 2. EXTRA CLAIMS FEES

| CLAIMS AS AMENDED | | | | | | |
|---|---|---|---|---|---|---|
| For | Number Present | Highest Number Paid For | Extra | Rate Large Entity | Rate Small Entity | Amount |
| TOTAL CLAIMS | 46 | 46 | 0 | x $ 50.00 | x $ 25.00 | $ 0.00 |
| INDEPENDENT CLAIMS | 3 | 3 | 0 | x $ 200.00 | x $ 100.00 | $ 0.00 |
| MULTIPLE DEPENDENT CLAIMS | | | | $ 360.00 | $ 180.00 | $ 0.00 |
| TOTAL EXTRA CLAIMS FEES | | | | | | $ 0.00 |

### SUBMITTED BY

| | | Complete (if applicable) | |
|---|---|---|---|
| Typed or Printed Name | Phillip D. Mancini for Kevin T. Duncan | Registration No. | 46,743 for 41,495 |
| Signature | *[signature]* | Date | December 14, 2005 |